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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,979	09/08/2004	Alain Delache	BONN-120	6948
32954	7590	06/27/2005		
JAMES C. LYDON 100 DAINGERFIELD ROAD SUITE 100 ALEXANDRIA, VA 22314			EXAMINER PATEL, NIHIR B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/506,979	Applicant(s) DELACHE ET AL.	
	Examiner Nihir Patel	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on September 8<sup>th</sup>, 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09.08.2004</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: **12**. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **9-17** are rejected under 35 U.S.C. 102(b) as being anticipated by Estes et al. (US 5,970,975).

Referring to claim **9**, Estes discloses a determination of the occurrence of an apnea that comprises a blower **14** (see column **10** lines **50-55**) to provide the patient with air under a

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treatment pressure, a control unit 30 (see column 108 lines 65-67) to adjust the pressure delivered by the blower at the level of the mask, a ramp module 104 (see column 19 lines 45-50) connected to the control unit in order to provide the control unit with a value of pressure ( $P_m$ ) to settle at the mask, so that when the apparatus starts functioning, the pressure progressively rises until the pressure of treatment ( $P_t$ ); and a comparator 34 (see column 11 lines 1-5) connected to the ramp module, at least one means for detecting the patient's breathing parameters and sending them to the comparator such that the comparator is able to determine whether an event occurs in patient's breathing based on the breathing parameters and to send the corresponding data to the ramp module which provides the control unit with a value of pressure ( $P_m$ ) that will speed up with respect of time, so that the rise of pressure at patient's mask is accelerated within the time when the ramp is activated.

**Referring to claim 10**, Estes discloses an apparatus wherein the ramp module provides the values of pressure ( $P_m$ ) being linear function of time wherein an increase coefficient ( $K_{rp}$ ) is constant, the ramp module increasing that coefficient of a constant value ( $K_e$ ) when the control unit sends a data corresponding to the event (see figures 8a-8c and figures 9a-9f).

**Referring to claim 11**, Estes discloses an apparatus wherein the value of pressure ( $P_m$ ) has always maximum and/or minimum limits so that the increase of pressure is also limited in minimum and/or maximum (see figures 8a-8ac and 9a-9f).

**Referring to claim 12**, Estes discloses an apparatus wherein the ramp module comprises a memory where a minimum coefficient ( $K_{rsp}$ ) is stored, the ramp module always maintaining the coefficient ( $K_{srp}$ ) equal or greater than the minimum coefficient ( $K_{srp}$ ), so that the ramp

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module provides the control unit with a value of pressure ( $P_m$ ) always greater than a minimum limit (see column 11 lines 50-60).

Referring to claim 13, Estes discloses an apparatus wherein the ramp module comprises a memory where a maximum coefficient ( $K_{mrp}$ ) is stored, the ramp module always maintaining the coefficient ( $K_{rp}$ ) equal or less than the maximum coefficient ( $K_{mrp}$ ), so that the ramp module provides the control unit with a value of pressure ( $P_m$ ) always less than a maximum limit (see column 11 lines 45-65).

Referring to claim 14, Estes discloses an apparatus wherein the means for detecting the patient's breathing parameters enable the control unit to compute the air flow at patient's mask, the comparator determining whether an event is occurring with the airflow parameter or shape (see column 10 lines 65-67 and column 11 lines 1-15).

Referring to claim 15, Estes discloses an apparatus wherein the ramp module increases the value of pressure ( $P_m$ ) when an anomaly in patient's breathing is detected (see column 1 lines 10-20).

Referring to claim 16, Estes discloses an apparatus wherein the anomaly is either snoring or apnea (see column 1 lines 10-15).

Referring to claim 17, Estes discloses an apparatus wherein the ramp module increases the value of pressure ( $P_m$ ) when the patient's breathing and asleep breathing or when they correspond to a stable frequency of breathing (see column 19 lines 30-67).

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP  
June 23<sup>rd</sup>, 2005



Henry Bennett  
Supervisory Patent Examiner  
Group 3700